(1)

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

90-1152

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

In Re: J.A. (JACK) STUBBLEFIELD,

Petitioner

PETITION FOR WRIT OF PROHIBITION and/or MANDAMUS TO Hon. Richard Turelli, Judge of the District Court, Douglas County, Division 1, State of Colorado; Hon. Oyer G. Leary, Senior District Judge, State of Colorado; The DISTRICT COURT OF DOUGLAS COUNTY, STATE OF COLORADO.

Edwin L. Davis
Counsel for Petitioner
P.O. Box 3400
Estes Park, CO 80517
(303) 586-2285

QUESTIONS PRESENTED FOR REVIEW

I. Is the trial court's attempt to exercise jurisdiction over Defendant, a non-resident of the State of Colorado, a violation of his due process rights under the *Fourteenth Amendment U.S. Constitution*, where:

(1) Defendant was acting as a foreign trustee of a foreign trust, and as such, he is under the jurisdiction of the State of Texas.

(2) there is no showing that Defendant trustee had sufficient "minimum contacts" with the State of Colorado, and where,

(3) there is no showing that the trustee transacted any trust business in Colorado; and where,

(4) there is no showing that the trust owned, possessed or used real property located in Colorado; and where,

(5) there is no showing that the trustee committed any tort in Colorado, or elsewhere.

II. Did Plaintiff fail to meet the burden of proof required by the due process clauses in order to establish jurisdiction over Defendant in the State of Colorado, where the only "proof" were allegations in the Complaint, all of which were refuted by Defendant's Answer, his

Motion to Quash Service and Dismiss, and his sworn affidavits.

III. In the interest of fairness and substantial justice, would it be reasonable to require Defendant come to Colorado in defense of this protracted multi-party litigation, when:

(1) Plaintiff waited for eleven years after the trust was created before filing his action, claiming that transfers to the trust (made in 1978 & '79) were in defraud of him, as a creditor of trustor; and when,

(2) Plaintiff did not become a creditor of trustor until three years after the transfer to the children's trust were made;

and when,

(3) the trust had been completely administered for about a year before Plaintiff filed his action against Defendant trustee; and when,

(4) the defenses of statute of limitations, laches, etc. are not available to this Defendant, unless he runs the risk of waiving his lack of jurisdictional claim and proceeds to trial on the merits in Colorado.

LIST OF PARTIES

1. Parties to the trial court's proceedings in Case No. 90-CA-201, Douglas County District Court, Div. 1, are:

DENNIS R. MUCK,

Plaintiff,

v.

1. SHEILA HUBKA, individually and as agent of Barefoot Hotel,
2. HAIKU, INC.,
3. ALSACE MINING & DEVELOPMENT CO.,
4. LEE E. STUBBLEFIELD, individually and d/b/a Stubblefield Investments, Ltd., and d/b/a Barefoot Hotel, and as agent for

Stubblefield Family Trust,

5. PENINSULAR ASSOCIATES, INC.

6. L.Y.S. de MEXICO, S.A.,

7. FRACCIONADORA PENINSULAR, S.A.,

8. JACK A STUBBLEFIELD, individually and as trustee of Stubblefield Family Trust,

9. MINA LU WARREN

10. CHARLOTTE JARRELL,

11. RAMON V. JARRELL,

12. PERRY PARK PROPERTIES, INC.

Defendants.

2. Parties who have answered and those repre-

sented by counsel in the trial court are:

(a) Plaintiff is represented by: Richard E. Young, Esq.,

1020 Fifteenth Street, Brooks Tower Penthouse South, Denver, CO 80202; Phone: (303) 892-1690.

(b) Defendants No. 10, 11 & 12 (above) are represented by:

Joseph F. Calanturo, Esq., 5350 South DTC Parkway, Bldg. 52, Englewood, CO 80111; Phone: (303) 741-2100.

(c) Defendants No. 8 & 9 are represented by Edwin L. Davis, Esq., Attorney for Petitioner herein.

[The remaining Defendants have either not been served with process or have been served through substitute service and no appearance has been made by them in the trial court.]

3. Respondents named in this Petition for Writ of Prohibition/Mandamus are:

(a) Hon. Richard Turelli, Judge of Douglas County District Court, Division 1, State of Colorado, Douglas County Courthouse, 355 S. Wilcox St., Castle Rock, CO 80104; Phone: (303) 688-1536.

(b) Hon. Oyer G. Leary, Senior District Judge for State of Colorado, 1110 N. Clermont Way, Thornton, CO 80233; Phone: (303) 452-9140.

(c) The District Court of Douglas County,

State of Colorado (same as Judge Turelli).

4. None of the parties in the trial court have any interest in this appeal except Plaintiff.

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STATEMENT OF JURISDICTION

This Honorable Court's jurisdiction is invoked under Title 28 U.S. §1651, and under any other section avalable to Petitioner's plea.

Petitioner-Defendant, a resident of Texas, strongly believes that the Douglas County District Court of the State of Colorado is wrongfully attempting to exercise *in personam* jurisdiction over him in violation of his right to due process of law, as guaranteed under the Fourteenth Amend. *U.S. Const.* Petitioner-Defendant was served with process and summons in Lamb County, Texas, where he resides [*Rec.* Ex. No. 8].*

The federal question of lack of *in personam* jurisdiction was first raised in Petitioner's Answer to Plaintiff's Complaint, filed in the trial court [*Rec.* Ex. No. 9]; raised again in Petitioner's Motion to Quash

Service of Process, and his affidavit attached [*Rec.* Ex. Nos. 1 & 1(a)]; again in his Motion for Rehearing, and Amended Motion for Rehearing, with another affidavit attached [*Rec.* Ex. Nos. 4, 5, 5(a)], all of which were denied [*Rec.* Ex. Nos. 3 & 6]. And, yet again, in his Petition For Writ of Prohibition, filed in the Colorado Supreme Court [*Rec.* Ex. No. 11], hearing on which was denied September 14, 1990, without opinion, [*Rec.* Ex. No. 12]. Hence, The Colorado Supreme Court has wrongfully determined that jurisdiction over Defendant exists in Colorado.

In actions where Defendant early on raises the issue of lack of *in personam* jurisdiction, due process demands a determination of that issue be had quickly and well in advance of trial, under Rule

12(d). *KVOS v. Associated Press*, 299 U.S. 269 p. 278; *O'Hare v. Hampton, infra* Note 1; *2A Moore, Federal Practice*, Sec. Ed., §12.16. To require this non-resident Defendant go through a protracted, multi-party trial in Colorado, with the attendant expenses and inconvenience, before this Honorable Court decides whether he should have been there in the first place, is itself unfair and substantially unjust. By winning, such Defendant loses, because of the likelihood of facing another trial in his home state. Hence, his expenses, annoyance and inconvenience will have doubled. And, while standing in wait during the first trial, he is tossed on the proverbial horns of whether to actively defend himself in the foreign state and thereby run the risk of waiving his jurisdictional claim, or, stand mute and chance that

the trier of the facts may find against him on the merits, as well as the issue of jurisdiction. Waiting until after trial on the merits to determine in personam jurisdiction, results in oppressed and coerced submission of a non-resident Defendant to the forum state's jurisdiction; and hence is a denial of Defendant's right to due process. Therefore, your Petitioner seeks relief now, through writ of prohibition. To wait until certiorari ripens, after trial on the merits, is too late. Most of the damage will have been done. Besides, it would require another appeal of this same issue through the state courts again.

There is no place left to voice his cry, except through this petition for relief.

* [Portions of the trial court's record, germane to this Petition, are being filed as a separate compi-

lation in the form of certified copies from the Clerk. All references made herein to such record appear as "*Rec.* Ex. No. _____". All references to Colorado Revised Statutes are designated as "C.R.S."; and references to Colorado Rules of Civil Procedure as C.R.C.P.].

*CONSTITUTIONAL PROVISIONS AND STATUTES**

1. Due Process clause of the Fourteenth Amend. *U.S. Const.*
2. 28 U.S.C. §1651(a)
3. Colorado's "Long Arm" Statute, §13-1-124 Colorado Revised Statutes
4. Trust Code of Texas, §115.001, Vernon's Annotated Texas Statutes

5. Trust provision of Colorado, §15-16-103, Colorado Revised Statutes

6. Statute of Limitations for fraud of creditors, §13-80-101, Colorado Revised Statutes

7. Rule 12(b), Colorado's Rules of Procedure

* [Pertinent portions of these are contained in the Appendix.]

REQUEST FOR STAY ORDER

Although the trial court has been advised that appeal to this Honorable Court is being perfected, nonetheless, such court recently ordered Petitioner to comply with lengthy discovery requests of Plaintiff. Such ordered discovery (which relates to events and transactions that occurred from 1978 forward) is unduly burdensome to Petitioner, annoying and

harassing. Petitioner sought protection in the trial court [*Rec.* Ex. No. 13]. Same was denied him [*Rec.* Ex. No. 14]. Reams of burdensome and harassing discovery will likely follow. For this reason, Petitioner requests this Honorable Court issue an order staying all proceedings in the trial court regarding Petitioner-Defendant, until the question of jurisdiction over him is finally determined.

STATEMENT OF THE CASE

In 1978 Defendant's brother, a Colorado resident, created an inter vivos family trust, primarily for the brother's children. [*Trust Instrument, Rec.* No. 1(b)] Shortly after its creation Defendant became the sole trustee of such trust. And, at that time all assets of the trust, which consisted of mort-

gage notes, were placed in the custody and control of Defendant in Texas, where he then lived (and still does). From that date forward Defendant administered the trust from his residence in Texas, collecting payments on such notes in Texas, depositing such collections in Texas banks and making disbursements from such banks to the various beneficiaries as called for under such trust. All acts performed by Defendant trustee pertaining to the trust were performed in Texas, including his acceptance of trusteeship and signing of the trust instrument. [See Defendant's Affidavit Support of his Motion to Quash and Dismiss, *Rec.* Ex. No. 1(a)].

Such trust was never recorded in Colorado [*Rec.* Ex. No. 7, para. I(12)], never owned real property in Colorado; and never conducted business

transactions in Colorado. All assets of the trust had been distributed from Texas by mid 1988 and the trust ended. [Defendant's Affidavits, *Rec.* Ex. No. 1(a) & 5(a)].

Under the provisions of the trust instrument, once Defendant became the holder of the trust res as sole trustee, jurisdiction over the trust and Defendant trustee was lodged exclusively in Texas. [Trust Instrument, *Rec.* No. 1(b), pp. 31-32; Def. Aff. p. 3, *Rec.* No. 1(a)].

Plaintiff waited until *mid 1989* before filing his Colorado action for $351,000 against Defendant complaining that the transfer of mortgage notes into such trust in 1978 were made by Defendant's brother in defraud of Plaintiff as his creditors and that Defendant was a party to such alleged fraud.

[Complaint, *Rec.* Ex. No. 7, p. 10].

At the time the trust was created in 1978, Plaintiff was not even a creditor of Defendant's brother, and did not become such *until 1981.* [Complaint, para. No. 28].

Service of process was had on Defendant at his residence in Spade, Texas. [Summons & Return of Service, *Rec.* Ex. No. 8]. Defendant filed an Answer in which he challenged the court's *in personam* jurisdiction over him. [Rec. Ex. No. 9]. Defendant filed a Motion to Quash Service of Process and Dismiss Complaint as to him based on lack of *in personam* jurisdiction [*Rec.* Ex. No. 1]. Before transferring this case to Douglas County, the Denver trial court, as one of its last acts, overruled Defendant's Motion to Dismiss. [Order dated

February 29, 1990, *Rec.* Ex. No. 3]. Defendant then filed a Motion and Amended Motion for Re-hearing on same [*Rec.* Ex. No. 4, 5]. Such requests for re-hearing were denied by order dated July 13, 1990, Honorable Oyer Leary, senior judge, Douglas County District Court, sitting for Judge Turelli. [*Rec.* Ex. No. 6]. Although requested by Defendant, no evidentiary hearing was held in the trial court concerning these motions. [*Rec.* Ex. No. 4]

Defendant sought relief through Petition for Writ of Prohibition filed in the Colorado Supreme Court. Such petition was denied on September 14, 1990, [*Rec.* Ex. No. 11 & 12].

As a basis for jurisdiction over Petitioner under Colorado's Long Arm Statute, [§13-1-124 C.R.S.]. Plaintiff alleges in his complaint that Defen-

dant committed tortious acts within the state resulting in injuries to Plaintiff within the State. And, that Defendant as trustee executed deeds to real property and conveyed real property interest in Colorado in connection with the trust [*Rec.* Ex. No. 7, paras. 14 & 73].

All such allegations were refuted by Defendant in his Answer, Motions for to Quash and Dismiss, and his sworn affidavits attached thereto [*Rec.* Ex. No. 1, 1(a), 2, 4, 5, 5(a) & 9].

At no time did Plaintiff produce any tangible evidence, nor sworn affidavits, that would clothe his naked allegations as to jurisdiction.

On the other hand, Defendant's sworn affidavits state that he performed no acts whatsoever within the state of Colorado in connection with the

trust; that the assets of the trust consisted on mortgage notes; that the trust never owned any real property; that during his time he was trustee, Defendant had no knowledge of any creditors of his brother; and that Defendant never intended to defraud Plaintiff nor anyone else, by his acceptance of trustship and administration of the trust for his brother's children [*Rec.* Ex. No. 1(a)].

ARGUMENT

Your Petitioner hesitates to file his plea with this Honorable Court - not because of lack of merit, but rather because it has strong merit which may not be heard nor felt.

These ponderous questions loom in your Petitioner's mind: Do these halls still harken to the

cry for due process - which come not through bars in a criminal case, nor from the chant of classes in civil right matters - but from a west Texas farmer whose cherished right of home site trial, among the people who know him best, is being unfairly denied him. Or, has his voice been muffled by the clamor of crowded dockets or muted in the rustle of over-stuffed calendars? Or, is it lost in the sound of giant clashes between giant corporations? If so, then your Petitioner is rendered "homeless" to this forum state's self-serving reach.

It is with these trepidations, interlaced in hope, that your Petitioner puts forth his plea for prohibition against the unwarranted and unreasonable exercise of jurisdiction over him by the State of Colorado.

I. *Colorado Courts Lack Jurisdiction Over Petitioner under the due process clause, since he was a Foreign Trustee of a Foreign Trust and did not have sufficient minimum contacts with the State of Colorado.*

All allegations in Plaintiff's complaint against this Defendant related to his activities while a trustee of his brother's children's trust. As such, the suit now pending in Colorado is an action against a foreign trustee of a foreign trust.

This case is of public importance because it involves an individual's constitutional right to due process of law and the sovereign rights of his state.

However, the importance of this case, transcends Petitioner's individual rights to those of all non-resident banks and trust companies who act as

trustee for any intervivos trust. Do they, by acceptance of trusteeship, run the risk of being haled into Colorado courts if their trustor had a creditor in Colorado at the time the trust was created? Or, if three years thereafter such trustor has a judgment placed against him in Colorado? What if five years or ten years thereafter? And when the only proof as to jurisdiction over such trustees is that of a Plaintiff's unsupported allegations, placed in complaint form and filed at a Colorado courthouse? And, eventhough such bank or trust company has filed sworn affidavits which negate all of Plaintiff's jurisdictional allegations?

Such was the holding of the Colorado trial court in this case, given sanction by denial of relief sought in the Colorado Supreme Court.

By entering such order denying Defendant's Motion to Quash Service of Process, the Colorado courts have ignored this Honorable Court's holding in *Hanson v. Denckla*, 357 U.S. 253 (1958).

The facts which the *Hanson case* have in common with the case at bar, are striking:

(1) the trustor of the trust was domiciled in Florida, where the suit was filed.

(2) the trustee was a Delaware bank, which did not do business in Florida.

(3) the assets of the trust, were located in Delaware.

(4) the trustee had signed the trust instrument in Delaware.

(5) the trust was administered in Delaware.

(6) checks were sent by the Delaware trustee to beneficiaries in Florida.

(7) the trustee performed no acts of "solicitation" in Florida, pertaining to trust business.

(8) the trustee did nothing to avail himself of the privileges of Florida, so as to accept the benefit of its law, by conducting trust activities there.

(9) the validity of the trust was attacked.

(10) the trust res consisted of mortgages.

In addition to the holding that "convenience" of the parties cannot be a basis for jurisdiction and hence used to extend the territorial limitations of a state, this Court held that Florida lacked *in personam* jurisdiction over the Delaware trustee because

such trustee did not *purposely avail itself of the privileges of Florida by conducting trust activities in the forum state.* [*Hanson*, p. 1298].

If one substitutes the names of the parties and the states in the *Hanson case,* with those of the case now before this Honorable Court, the facts are akin to a glove. The mere allegation of Plaintiff, in the instant case, that Defendant committed a tort in connection with the trust, does not of itself place Defendant any closer to Colorado courts than under *Hanson.* Such allegation, standing alone, does not increase the quality nor quantity of Defendant's contacts with Colorado; especially when set against Defendant's sworn denial of any conduct on his part (tortious or otherwise) in the State of Colorado. Hence, the holding in *Hanson* fits like the facts.

In dealing with trusts, some states have held that jurisdiction over the trustee rests in the state where the trust res is located. [15 *ALR 2d* p. 618 et seq.] Others have held that jurisdiction lies where the principal place of administration of the trust is lodged; still others, where the trustee resides. A few states, such as Colorado, hold that jurisdiction rest where the trust instrument provides, *Yugoslavia v. Jovanovich*, 69 P.2d 311 (1937). [See 15 ALR 2d 610, Trust-Jurisdiction §20,36].

Absolutely no cases could be found from other states which hold that jurisdiction over the trustee rests in the state where the settlor and/or beneficiaries reside, absent any of the other factors mentioned above.

In the case at bar all of the elements for jurisdiction are founded in Texas. [See 76 *Am. Jur.* 2d pp. 502 & 784].

The state of Texas recognizes the common law of trusts by virtue of its Trust Code, Chapter 115, Vernon's Annotated Texas Statutes §115.001 et seq. Under §115-001 V.A.T.S., the District Court of Texas is granted original and exclusive jurisdiction over trusts of that state and the determination of any liability on the part of a trustee.

The Colorado Revised Statutes provide only two methods by which local jurisdiction is gained over foreign trustees. Either the trust must be registered in a Colorado Court, or a foreign trustee must accept trusteeship of a trust so recorded. [§15-16-103 C.R.S.]. Neither is present in this case

because the family trust of Defendant's brother was never registered in a Colorado Court. [Complaint, para. No. 12, *Rec.* 7] Nor was it required to be, because the principal place of administration was Defendant's residence in Texas (§15-16-101 C.R.S.). Once the assets of the trust were transferred to Defendant's residence, and upon notification to the beneficiaries, the trust instrument provides that jurisdiction over the trust and trustee shall be in Texas. [Trust Instrument pp. 31-32, *Rec.* No. 1(b)]. The settlor's desire as to jurisdiction should be complied with, where reasonable in light of the circumstances. *Yugoslavia v. Jovanovich,* supra.

Shortly after the assets of the trust were transferred to Defendant in 1979 as sole trustee, all the conditions set out in the 8th and 11th Article of the

Trust instrument were complied with. [See Trust Instrument pp. 29, 31-32; *Rec.* No. 1(b); and Defendant's Affidavit, *Rec.* 1(a)]. At that point the state of Defendant's residence gained exclusive jurisdiction over the trust and the trustee. [See *Kitchen v. New York Trust,* 168 S.W. 2d 5 (KY); 90 *C.J.S.* §160, p. 15; §115.001 et seq., Vernon's Annotated Texas Statutes *Rec.* No. 1(c)].

In another portion of Plaintiff's complaint, he urges (as one of his remedies) the court impose a constructive or resulting trust in his favor over the assets of the children's trust. Again, in order to obtain such relief, Plaintiff must bring his suit in the state where the trust res is located, or, where Defendant trustee resides. *Gassert v. Strong,* 38 Mont. 18, 98 P. 497, er. dismd. 215 U.S. 583; See *15 ALR 2d*

610, et seq.

In the case at bar, the trial court lacks jurisdiction over Defendant trustee under the facts and holdings in *Hanson*; under the holdings of other states; under the trust instrument itself; under the trust statutes of Texas; and under the due process clause of the Fourteenth Amend. *U.S. Const.* Defendant lacked the necessary contacts with the State of Colorado sufficient to meet the requirements of due process and sufficient to warrant infringement on the sovereign rights of Texas.

II. *Colorado Courts lack jurisdiction over Defendant under the Long Arm Statute §13-1-124 C.R.S.*

Today, as in 1945, the question of when a state can obtain *in personam* jurisdiction over a non-resident Defendant by service of process outside the state - is governed by the "minimum contacts" test enunciated in *International Shoe v. Washington*, 326 U.S. 310.

Most states have enacted "long arm" statutes in an attempt to define various instances in which that "old shoe" fits a non-resident Defendant. Colorado provides that where the Defendant transacts any business; or owns or possess real property; or commits a tortious act within the state, jurisdiction attaches over the non resident. [§13-1-124 C.R.S.].

However, this Honorable Court has found it necessary, in each of the above instances, to engraft caveats to such statutes in order to protect

Defendant's right to due process. Hence, this Court has held that the mere ownership of land in the forum state is not sufficient to confer jurisdiction over a non-resident owner, unless such land is the subject matter of the suit. *Shafner v. Heitner*, 433 U.S. 186 (1977); *Rush v. Savchuck*, 444 U.S. 320 (1980). Alike, transactions of any business in the forum state do not grant jurisdiction over a non-resident, unless such transactions are the basis of the suit brought there. *Kulko v. Sup. Ct. of California*, 436 U.S. 84 (1978). As applied to trusts, a non-resident trustee must purposefully avail himself of the privilege of conducting trust activities in the forum state, thus invoking its benefits and protection, in order to confer jurisdiction there. *Hanson v. Denckla*, supra.

In the case at bar, there is no showing that Defendant transacted any trust business in Colorado; nor, that he had any contacts with such state which would justify haling him into court there. [Def. Affs. *Rec.* Ex. Nos. 1(a) & 5(a)].

Subsection (c) of §13-1-124 C.R.S. attempts to gain jurisdiction over non residents who own real property in Colorado, as well as those who possess or even use real property there.

Although the trust res consisted of mortgage notes, some of which may have encumbered Colorado property [Plaintiff's Response to Motion to Quash, *Rec.* Ex. No. 15], the trust did not, by virtue of such mortgages, own, possess, nor have the right to use such property. And, §38-35-117 C.R.S. so provides; as do the cases construing such statute.

[*Erwin v. West* 6 P.2d 462 (Colo. 1939)].

The Colorado Supreme Court has stretched the "tort committed within the state" provision of its long arm statute to reach all torts committed in other states, where the injury occurs in Colorado, *Texair Flyers v. Dist. Court*, 506 P.2d 367 (Colo. '73).

Here, whatever Defendant did as trustee of the children's trust, was done in Texas; and, he had no contacts with the state of Colorado in doing them [*Rec.* Ex. No. 1(a)]. Even if one could accept as valid the concept of "a tort is committed where the injury occurs," still the necessary contacts with the state of Colorado have not been shown in order to establish jurisdiction over Defendant. *International Shoe*, supra. Nor has there been any proof of Plaintiff's allegations as to a tort committed by

Defendant in Colorado, or elsewhere.

Through a series of decisions this Court has held that minimum contact must be such that:

(1) Defendant purposefully availed *himself* of the privilege of conduct in trust activities in the forum state thereby invoking the benefits and protection of its laws. *Hanson*, supra, p. 253,

(2) that Defendant, by the nature and quality of his acts, should have reasonably foreseen being haled into court in the forum state, *World Wide Volkswagen v. Woodson*, 444 U.S. at 295; and

(3) considering the particular facts of the case, it would be fair and substantially

just to require Defendant go to the forum state in his defense, *Ibid* at 292.

Here, whatever the trustor brother may have done in Colorado does not go to satisfy Colorado's juris over Defendant. *Burger King v. Rudzewicz, 471 U.S. 462,* specially holds that only the acts of Defendant *himself* can be used in determining "purposeful availment." Instead, Defendant purposefully availed himself of the privilege and laws of the state Texas. If any other inference can be drawn from the record, it is that Defendant purposefully did not avail himself of the benefit, protection or privilege of conducting trust activities in Colorado. Plaintiff's cause of action did not arise out of an act done or transaction consummated by the Defendant in the forum state, *Hanson*, p. 251. The last thing in Defendant's mind

must have been that he would be haled into the courts of Colorado by an alleged creditor of his brother's who did not even exist at the time Defendant agreed to act as Trustee for his brother's children; especially in a suit filed eleven years after transfers to the trust had been made and over a year after the trust was completely administered.

Should this Honorable Court somehow hold to the belief that its decision in *Hanson*, the decision from courts of other states, the provisions of the trust instrument, and the trust statutes of Colorado and Texas - are not dispositive of the jurisdictional question at hand, then surely, this Court must find that the trial court has stretched the application of the Colorado long arm statute far beyond its grasp. And, in so doing, has attempted to reach this Defen-

dant by going around the barriers imposed by the due process requirements of the *Fourteenth Amend. U.S. Const.*, without any competent proof as to jurisdictional facts, except the bare allegations of Plaintiff's complaint.

III. *Plaintiff Failed to Meet his Burden of Proof Necessary Under the "Due Process" Clause to Establish Jurisdiction in Colorado Over Non-Resident Defendant.*

In 1935, this Court laid down the rule that jurisdictional facts alleged in a complaint, once challenged by Defendant, must be established through Plaintiff by "competent proof". *McNutt v. General Motors*, 298 U.S. 178. And in cases that involve challenges to alleged jurisdictional facts,

other than subject matter jurisdiction, the Court may require Plaintiff to meet his burden of proof by a preponderance of the evidence. *McNutt*, supra, p. 189.

Plaintiff's burden of "competent proof" to establish alleged jurisdictional facts, once challenge is lodged, was reinforced as the standard in *KVOS v. Associated Press*, 299 U.S. 269; and in *Thomson v. Gaskill*, 315 U.S. 442, both dealing with "amount in controversy" requirements for jurisdiction.

This Court stated in *Chapman v. Houston Welfare*, 441 U.S. 600, 612n, that it is a settled rule: the party claiming that a court has power to grant relief in his behalf has the burden of persuasion on jurisdictional issues.

No expression of this Honorable Court could be found which in any way lessens Plaintiff's standard for proof, when confronted with challenges made to his allegations of *in personam* jurisdiction over a non-resident Defendant.

The rule of *McNutt* has been cited literally a thousand times by various federal and state courts. In spite of this, complete chaos exists in their attempts to apply it to *in personam* jurisdictional questions involving non-resident Defendants.

Some courts hold that "prima facie" proof or "raising an inference" of jurisdiction in the forum state over a non-resident Defendant is sufficient for Plaintiff to meet his burden of proof, when chal-

lenged by Defendant's answer or motion to dismiss.[1] Others hold that, once challenged, Plaintiff must prove the truth of all *in personam* jurisdictional facts, alleged in his complaint, by "competent proof" (without any definition of that standard) or by a preponderance of the evidence.[2] Many courts,

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[1] *Pioneer Asto v. Dist. Ct.*, 566 p. 2d 1067 (Colo. 1977); *Jenner & Block v. Dist. Ct.*, 590 P. 2d 964 (Colo. 1979); *Texair Flyers v. Dist. Ct.*, 506 P. 2d. 367 (Colo. 1973); *Michigan Nat'l. Bank v. Quality Dinette*, 888 F. 2d 462 (6th Cir. 1989); *Wyatt v. Kaplan*, 686 F. 2d 276 (5th Cir. 1982); *O'Hare Int. Bank v. Hampton*, 437 F. 2d 1173 (7th Cir. 1971)

[2] *Grafon v. Hausermann*, 602 F. 2d 781 (7th Cir. 1979) required proof of challenged jurisdictional facts by a *preponderance of the evidence*; Donatelli v. NHL, 893 F. 2d 459, 468 (1st Cir. 1990); *AMEX v. Mendez*, 889 F. 2d 1175 (1st Cir. 1989); *Escude Cruz v. Ortho Pharm.*, 619 F. 2d 902 (2nd Cir. 1980); *Wyatt v. Kaplan*, 686 F. 2d 276 (5th Cir. 1982); *Diefenthal v. C.A.B.*, 681 Fed. 2d 1039 (5th Cir. 1982) must be grounded in fact; *Ind. Electric v. Cline*, 330 F. 2d 480 (3rd Cir. 1964) by a preponderance of the evidence; *Products Promotion v. Cousteau*, 495 Fed. 2d 483 (5th Cir. 1974) burden never shifts; *State of New Mex. v. Columbia*, 583 P. 2d 468 (N.M.); *Greenly v. Davis*, 486 A. 2d 669 (Del.), burden on Plaintiff to make a "specific

requiring only "prima facie" proof, hold that mere allegations in Plaintiff's complaint of facts which falls within the purview of the applicable long arm statute is sufficient "proof". And, where such facts are controverted by Defendant's answer or motion to dismiss, Plaintiff's pleadings *must be taken as true*; hence his burden is met.[3] Such courts likewise hold that where pleadings and affidavits of the respective parties are contradictory, those of Plaintiff must be taken as true; again his burden met.[4]

However, many state and federal appellate courts hold where the parties pleadings and/or

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showing"; *State ex el Sweere v. Crookham* 609 P. 2d 361 (Or.); *Nicholas Assoc. vs. Starr*, 341 N.E. 2d 909 (Mass.); *Maloof v. Roper*, 557 P. 2d 552 (Az.) must prove the very facts alleged; *All Lease V. Belts*, 199 N.W. 2d 821 (Minn).

[3] *Ibid,* Note 1.

[4] *Ibid,* Note 1.

affidavits are contradictory, Plaintiff failed to meet his burden of proof and Defendant must be dismissed from the suit for lack of personal jurisdiction.[5] In cases where Plaintiff alleges non-resident Defendant committed a tort within the forum state, most of these courts require that Plaintiff prove, in fact, such allegations when traversed by Defendant's answer and/or motion to dismiss.[6]

In the case before this Court, Plaintiff alleged (among other things) in his complaint that Petitioner

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[5] *Rodriquez v. Hughes A.C.*, 781 F. 2d 9 (1st Cir. 1986); *Block Ind. v. DHJ*, 495 F. 2d 256 (8th Cir. 1984); *Citizens v. City of Denver*, 628 F. 2d 1289, 1300, 1301 (10th Cir. 1980); *Nicholas Assoc. v. Starr*, supra, to favor Plaintiff's pleadings would misplace burden of proof. (See additional cases under Note 2).

[6] *AMEX v. Mendez* (1st Cir.), supra; *Rodriquez v. Hughes A/C* (1st Cir.), supra; *Wyatt v. Kaplan* (5th Cir.), supra; *Escude v. Ortho Pharm.* (2nd Cir.), supra; *Block Ind. v. DHJ* (8th Cir.), supra. (See additional cases under Note 2).

committed a tort in Colorado resulting in injury to him in Colorado [*Rec.* Ex. No. 7, p. 2]. Such alleged jurisdictional facts were denied in Defendant's Answer, Motion to Quash and his sworn affidavit. Plaintiff offered no affidavit or other proof to buttress his allegations. The trial court denied, without hearing, Defendant's motion to quash service of process and for dismissal. Defendant's motion for reconsideration was likewise denied, without hearing, as was his petition for writ of prohibition filed with the Colorado Supreme Court [*Rec.* Ex. No. 4, 5, 6 & 12]. Under Colorado Rule 12(b)(2), Motion to Quash/Dismiss is the proper method to raise the question of personal jurisdiction. Rule 12 C.R.C.P. is fashioned after the Federal Rule. *Board of Comm. v. Dist. Ct.*, 472 P.2d 128 (Colo. 1970).

This Court held in *Gibbs v. Buck*, 307 U.S. 66, 72, that allegations as to jurisdiction contained in a complaint, standing alone, are sufficient if not traversed. However, when Plaintiff's jurisdictional allegations are traversed by Defendant's answer and/or Motion to Dismiss, then the burden of proof is upon Plaintiff to establish jurisdiction.

No state has shown more eagerness to extend the reach of its "long arm" "to the fullest extent permitted by due process," than has the State of Colorado. *Dwyer v. Dist. Ct.*, 532 P.2d 725, 726 (Colo. 1975). In its zeal, the Colorado court has ignored the burden of proof required by Plaintiff under *McNutt, Thomson, Chapman* and *KVOS* cases, *supra*; and, has brushed aside the "minimum contacts" requirements of *International Shoe*, supra.

In so doing, all due process rights of this non-resident Defendant have been vitiated, as shown in the discussion of cases below.

In *Vandermere v. Dist. Ct.*, 433 P.2d 335, the Colorado Supreme Court, in taking jurisdiction over an alleged out-of-state tort feasor, held that torts committed in another state which result in injury in Colorado, are deemed as committed in Colorado, and hence fall within the provision of their long arm statute as "tortious acts committed in Colorado."

In *Texair Flyers v. Dist. Ct.*, supra, involving a wrongful death action brought in Colorado against a Texas resident as owner of the malfunctional plane, the high court held Plaintiff's averments in his Complaint that Defendant committed tortious acts in Colorado were sufficient, in themselves, to meet

Plaintiff's *in personam* burden of proof since such allegations raised an inference of jurisdiction over Defendant. Further, that Plaintiff's pleadings *must be taken as true* and therefore they were not subject to attack by Defendant's motion to quash and affidavits filed.

The circuitous reasoning employed was: since, by Court construction, a tort is committed where injury occurs, and Plaintiff having pled injury in Colorado, no other "proof" and no other contact with the state need be shown to gain *in personam* jurisdiction over the out of state tort feasor under the long arm statute.

In *Pioneer Astro v. Dist. Ct.*, supra (Colo. 1977), involving a breach of contract suit against a Florida resident, the Court held mere allegations in

Plaintiff's complaint that a non-resident engaged in *any act set out in the long arm statute*, was sufficient to gain in personam jurisdiction, regardless of controverting pleadings and affidavits filed by Defendant.

In *Jenner & Block v. Dist. Ct.*, 509 P.2d 964 (Colo. 1979), the high Court extended its holding in *Texair Flyers, supra*, to include all alleged "intentional" torts committee outside of Colorado. Further, the Court held that such out-of-state tort feasors need have no other connection with the State then the link supplied by Plaintiff's complaint, in order to satisfy the jurisdictional requirements of "due process;" and that Plaintiff's allegations re *in personam* jurisdiction were not subject to attack by Motion to Quash/Dismiss.

Under Colorado law, intentional torts include: "tortious interference with a business relationship;"[7] "intentional breach of contract;"[8] "intentional infliction of mental anguish and emotional distress;"[9] and "outrageous conduct."[10]

Therefore, under *Jenner & Block v. Dist. Ct., supra*, a Plaintiff in Colorado need only allege the existence of one of the above "intents" in connection with his primary cause of action and, since Plaintiff's

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[7]*Plaza Esteban v. La Casa*, 738 P. 2d 410 (Colo. App. 1987), *Memorial Gardens v. Olympian Sales*, 690 P. 2d 207 (Colo. 1984)

[8]*Redersheid v. Comprecore*, 667 P. 2d 766 (Colo. 1983); *Credit Inv. v. Guaranty Bank*, 353 P. 2d 1098 (Colo. 1960)

[9]*Enright v. Groves*, 560 P. 2d 851 (Colo. App. 1977) *in breach of contract*; *Rugg v. McCarty*, 476 P. 2d. 753 (Colo. 1970)

[10]*Churchey v. Adolph Coors*, 7959 P. 2d. 1336

allegations must be taken as true, a non-resident Defendant from any state is rendered powerless to effectively refute them. Simple for Plaintiff; destruction for due process.

In the case at bar, proof of the tort alleged (transfers in defraud of creditors) carries with it the elements of intent,[11] and of knowledge on the part of Defendant.[12] Mere signing of the trust instrument by Defendant in Texas, and performance of his duties as trustee there, do not of themselves establish these elements. And, Plaintiff tendered no proof of these; nor could he because he was not a creditor of trustor at the time transfers into trust were made. If allegations of intent and knowledge are relied upon

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[11] *James v. Myers*, 270 P. 1117 (Colo. 1928)

[12] *Wright v. Nelson*, 242 P. 2d 243 (Colo. 1952)

by Plaintiff to gain jurisdiction over non-resident Defendant, then some measure of proof of same must be required.

In *O'Hare v. Hampton*, supra Note 1, the court of appeals, while stating that Rule 12(b)(2) Motions to Quash require a preliminary hearing in advance of trial under Rule 12(d), found that Plaintiff's pleading and affidavits, though controverted by Defendant's, must be taken as true and therefore Plaintiff had met his burden of jurisdictional proof, citing *Woodworkers Tool V. Byrne*, 191 F. 2d 667 (9th Cir. 1951). In the *Michigan Nat'l Bank* case, supra Note 1, the Sixth Circuit court of appeals recently held that in considering Rule 12(b) motions, the court must look solely to Plaintiff pleadings and affidavits, and if sufficient, then Defendant's asser-

tion of contrary facts must be ignored. A similar conclusion was reached by the 5th Circuit in *Wyatt v. Kaplan*, supra Note 1.

Where is the proof demanded of Plaintiff by this Court in its *McNutt, Thomson, KVOS,* and *Chapman* decisions? In point of fact, there is none.

The above holdings of the Colorado Supreme Court and those of the circuit courts make mockery of this Defendant's due process rights.

By the talons of Plaintiff's pen, alone, your Petitioner has been plucked from his West Texas farm and dropped among the tall buildings into Denver's Courthouse. Why should the ink of Plaintiff's pen be stronger than that of Defendant's? Before your Petitioner is stripped of his due process rights, justice and fair play demand that Plaintiff,

having the privilege of choice of forum, be required to substantiate that choice with facts which are elicited through some manner of proof other than the parchment and pen of Plaintiff's complaint.

Under the law of Colorado, your non-resident Petitioner was denied due process by the manner in which *in personam* jurisdiction over him was determined. Stated again, the standard of proof used to determine jurisdictional due process was itself a denial of same. The employment of such devises shifted the burden of jurisdictional proof to Petitioner and placed him in the position of proving the court lacked jurisdiction over him; a mission made impossible by the court's acceptance of Plaintiff's pleadings as sacrosanct.

Hence, under Colorado law (as well as the holdings of the 5th, 6th, & 7th circuits, supra) all restrictions over *in personam* jurisdiction imposed by due process have met their demise, as have the sovereign rights of all sister states. And, non-resident defendants are left "homeless" by such decisions.

This Honorable Court stated in *McNutt*, p. 189, that Plaintiff's averments, where traversed by Defendant, were insufficient to maintain jurisdiction, and that Plaintiff could not be relieved of his burden of proof by any "formal procedure."

This Court agreed to accept the *Thomson* case, p. 446, because the federal appeals court had mistakenly given more weight to Plaintiff's pleadings than those of Defendant.

McNutt, KVOS and *Thomson*, supra, all hold that once jurisdictional facts of Plaintiff's complaint are traversed by Defendant, Plaintiff has the burden of establishing his facts so pled, by "competent proof," albeit these cases deal with "amount of controversy."

It is respectfully submitted that the conflict in holdings between various state and federal courts (cases in Note 1 c.f. Note 2) has arisen through lack of guidance from this Honorable Court as to the *standard* of proof to be used in the determination of *in personam* jurisdiction, where Defendant's due process rights, and the rights of his sovereign state are in jeopardy. The Court's previous decisions have dealt with the standard of jurisdictional proof but not in the context of due process. Rather, they were

concerned with "subject matter" jurisdictional limitations imposed on courts by statute.

Lacking such guidance, the courts have sought their own devises for determining Plaintiff's burden of *in personam* proof. Hence, whether a non-resident Defendant is afforded due process in the determination of *in personam* due process depends in large part on the forum selected by Plaintiff. That is, whether Defendant is placed a "plaintiff's pleadings prevail" forum, or one that requires Plaintiff prove his controverted jurisdictional facts by a "preponderance of the evidence" - or by "competent proof," or by "specific showing," or that they are "grounded in facts." [See cases under Note 2]. Being out there and left to Plaintiff's draw, has resulted in an uneven distribution of due process

rights among non-resident Defendants.

In *McNutt*, supra, p. 189, this Court sanctioned two different measures of proof applicable to Plaintiff's burden where his jurisdictional allegations have been traversed. Where "subject matter" jurisdiction is at issue, the Court requires Plaintiff prove his alleged facts by "competent proof" (although the true meaning of this measure has never been clearly defined). This Court noted, however, that in other matters of jurisdictional proof, a *preponderance of the evidence* may be required.

How can it be said that the jurisdictional rights of the courts, conferred by statute, deserve more weight than do the rights of an individual to due process, carved out of our *Constitution*? Or more weight than the sovereign rights of states,

reserved under that same document?

Why shouldn't the degree of proof required of Plaintiff be greater when an individual's liberty is at stake, than when limitations on subject matter of courts are involved?

Surely this Court's intent in *McNutt* was that when *in personam* jurisdiction over a non-resident Defendant is questioned, which necessarily requires a determination of his due process rights, then the jurisdictional burden of proof on Plaintiff is by a *preponderance of the evidence* (i.e. that the alleged jurisdictional facts more likely exist than not; see McCormick, *The Law of Evidence*, Sec. Ed. §339) If not in these determinations of jurisdiction, then where does such measure of proof fit?

In 1935, this Court accepted the *McNutt* case for review because of conflict in lower court decisions over Plaintiff's burden of jurisdictional proof, where facts alleged in the complaint re same are traversed by Defendant. At that time, the Court thought important that "there should be consistent practice in dealing with jurisdictional questions," and, that the practice in the lower courts "should be harmonized (at p. 189)."

It is submitted, that time has come again.

Full and adequate relief cannot be afforded your Petitioner unless this Court decides the standard to be used in measuring the degree of *in personam* proof required by Plaintiff in this case; except in the event this Court orders Defendant be dismissed from Plaintiff's action with prejudice to

refiling same in Colorado.

IV. *It Would Be Manifestly Unfair and Substantially Unjust to Require Defendant Come to Colorado in Defense of Plaintiff's Action.*

Even if Plaintiff could (under some hypothesis unknown to this counsel) be said to have established the constitutional touchstone of "purposeful minimum contacts" with the forum state; he has wholly failed to show that it would be fair and substantially just to require Defendant come to Colorado in his defense. See. *International Shoe*, supra (p. 320), *World Wide Volkswagen v. Woodson*, 444 U.S. 286 (p. 292), and *Burger King v. Rudzewicz*, 471 U.S. 462 (at 476-478). Nor can he make such showing because the following circumstances of this case belie

such proof:

(1) Plaintiff waited for eleven years after the trust was created before filing his action, claiming that transfers to the trust (made in 1978 & '79) were in defraud of him, as a creditor of trustor;

(2) Plaintiff did not become a creditor of trustor until three years after the transfer to the children's trust were made;

(3) the trust had been completely administered for about a year before Plaintiff filed his action against Defendant trustee;

(4) the defenses of statute of limitations, laches, etc. are not available to this Defendant, unless he runs the risk of

waiving his jurisdictional claim and proceeds to trial on the merits in Colorado.

The time orientated defenses of laches and statute of limitations as a bar[13] to Plaintiff's action cannot be raised by Defendant through motions to dismiss, in Colorado, eventhough the action shows to be barred on its face.[14] Instead, these defenses are left to decision by the trier of the facts in trial on the merits.[15] Hence, your Petitioner would be required to go through the entire trial in Colorado in order to reach these obvious matters.

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[13]§13-80-101 C.R.S. (3 years for alleged fraud of creditors)

[14]*Smith v. Kent Oil*, 261 P. 2d 149 (Colo. 1953); *McPherson v. McPherson*, 358 P. 2d 478 (Colo. 1960)

[15]*Ibid.*

This Court has previously held that in arriving at the determination of fairness and substantial justice, consideration must be given to such factors as: whether Defendant should have reasonably foreseen, by his actions, that he would be haled into the forum state;[16] whether Defendant purposefully availed himself of the forum state;[17] the nature and quality of Defendant's acts,[18] etc.

All of the above cases fix their focus on the actions of Defendant, solely. In effect, they seek to determine if Defendant, by his actions, has waived his due process right to home site trial (and appar-

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[16] *World Wide Volkswagen v. Woodson,* supra, p. 297

[17] *Hanson v. Denckla,* supra

[18] *Helicopteros Nacionales v. Hall,* 466 U.S. 408, p. 418; *International Shoe v. Washington,* supra, p. 318

ently those sovereign rights of his state).

However, in *Kulko v. California, supra*, p. 92, this Court stated that the particular facts and circumstances of each case must be weighed in the quasi-equitable determination of fairness, reasonableness and substantial justice.

If this be true, then surely fair play would demand that the Court consider Plaintiff's actions in the exercise of his privilege of choice of forum, as well. Such actions as: the length of time Plaintiff waited before attempting to hale Defendant into the foreign forum chosen by Plaintiff; whether Plaintiff's claim is barred on its face by statute; the nature of Plaintiff's claim and whether he would likely prevail on same, etc. Especially where (as in Colorado) such dilatory issues of laches and statutory bar must

be advanced as defenses in trial on the merits. And, in Defendant's appearance to assert same, he runs the risk of waiving his jurisdictional claim. *Nations Enters. v. Process Equip.*, 579 P.2d 655 (Colo. 1978).

In the case at bar, Plaintiff slept on his rights for *over a decade* after the creation of the trust and for *8 years* after he became a creditor of Defendant's brother before he attempted to exercise whatever right he had to hale this Defendant into Colorado courts. Furthermore, the transfers into trust, which Plaintiff claims were in defraud of him as creditor of Defendant's brother, were made in 1978 and Plaintiff did not become such creditor until 1981. The trust had expired and all assets distributed more than one year before Plaintiff filed his action.

Under Rule 12 (Colo. & Fed.) even the slightest slip by Defendant in failing to timely raise his claim of lack of *in personam* jurisdiction is deemed a waiver of his due process rights. Shouldn't Plaintiff be held to some degree of diligence in the exercise of his privilege of choosing the forum?

In weighing the circumstances of the case to determine fairness, surely the scales have two sides. And, if Defendant's actions regarding his constitutional rights (and those of his state) are placed on one end, shouldn't there be a space for Plaintiff's actions regarding his privilege of choice of forum, on the other? Plaintiff's outrageous delay in making his call for extradition must find some place upon it, with meaningful measure. As must the timeliness of his action, whose face is barred on sight. If not upon

these scales, then where is the place for Plaintiff's belongings? In setting them on the floor of foreign courts, Defendant waives "goodbye" to home.

Oh, your Petitioner hears Plaintiff's call to commerce, convenience of litigation, and expediency in his forum. But, fairness must be called by stronger voice; one that sounds in both ears.

Here, Plaintiff should be held to have waived his right to hale this Defendant into Colorado courts by his inordinate delay in exercising this privilege.

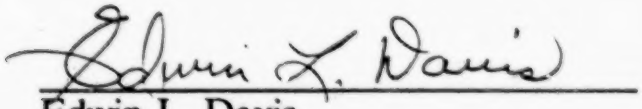
If for no other reasons stated herein, the traditions of fair play and substantial justice demand reversal of the trial court's ruling as to jurisdiction over this Defendant, and dismal of Plaintiff's action as to Defendant with prejudice to refiling same in Colorado. *Burger King*, supra, p. 471.

CONCLUSION

In view of the obvious lack of merit shown on the face of Plaintiff's complaint, it would be grossly unfair and substantially unjust to compel your Petitioner endure trial on the merits of this case, before a determination is made as to whether he should have been there at all. Since Plaintiff-creditor failed to meet his burden of *in personam* proof, your Petitioner prays this Honorable Court grant his Petition for Writ of Prohibition and/or Mandamus, reverse the trial court's ruling as to *in personam* jurisdiction over him, and order such court to dismiss him from Plaintiff's action, with prejudice to refiling same in the State of Colorado. And, Petitioner prays for such other and further relief to

which the Court may deem him justly entitled, either in law or in equity.

Respectfully submitted,



Edwin L. Davis
Counsel for Petitioner
P.O. Box 3400
Estes Park, CO 80517
(303) 586-2285

APPENDIX

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1. DISTRICT COURT, COUNTY OF DOUGLAS, COLORADO

Case No. 90 CV 201, Division 1

ORDER

DENNIS R. MUCK,

Plaintiff,

v.

SHEILA HUBKA, et al.,

Defendants.

The matter comes on to render a ruling on Defendant J.A. Stubblefield Amended Motion for Re-Hearing and Reconsideration of his Motion to Dismiss.

The Amended Motion was filed May 18, 1990, and the Plaintiff filed his response thereto on June 1, 1990.

The Court having considered the briefs and attached Affidavits concludes that this Court has *in personam* jurisdiction over this Defendant applying the authority of *Panos Inc.*

Co. v. District Court, 662 P.2d 180, and *Van Schaack & Co. v. District Court*, 538 P.2d 425. The Court adopts in support of its ruling the argument and citations of authority as contained in Plaintiff's brief as if set forth herein.

Done and signed in open court his 13th day of July, 1990.

BY THE COURT:

_____

Oyer G. Leary
Senior District Court Judge

2. SUPREME COURT, STATE OF COLORADO

CASE NO. 90SA364

ORDER OF COURT

J. A. (JACK) STUBBLEFIELD,

Petitioner,

v.

THE DISTRICT COURT OF DOUGLAS COUNTY, Division 1, STATE OF COLORADO; and Honorable Oyer G. Leary, Senior District Court Judge; Honorable Richard Turelli, Judge of the District Court of Douglas County, Division 1, State of Colorado,

Respondents.

Upon consideration of the Petition for Writ of Prohibition filed in the above case, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Petition shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, SEPTEMBER 14, 1990.

3. **13-1-124. Jurisdiction of courts**

(1) Engaging in any act enumerated in this section by any person, whether or not a resident of the state of Colorado, submits such person to the jurisdiction of the courts of this state concerning any cause of action arising from:

(a) The transaction of any business within this state;

(b) The commission of a tortious act within

this state;

(c) The ownership, use, or possession of any real property situated in this state.

(Colorado Revised Statutes)

4. **Section 115.001. Jurisdiction**

(a) A district court has original and exclusive jurisdiction over all proceedings concerning trusts, including proceedings to:

(1) construe a trust instrument;

(2) determine the law applicable to a trust instrument;

(4) determine the powers, responsibilities, duties, and liability of a trustee.

(Trust Code, Vernon's Revised Texas Statutes)

5. **15-16-103. Effect of registration.**

(1) By registering a trust, or accepting the

trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court in any proceeding under section 15-16-201 relating to the trust. *(Colorado Revised Statutes)*

6. **13-80-101. General limitation of actions - three years.**

(1) The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within three years after the cause of action accrues, and not thereafter.

(c) All actions are fraud, misrepresentation, concealment, or deceit. *(Colorado Revised Statutes)*

7. **Rule 12. Defenses and Objections.**

(b) **How Presented.** Every defense, in law or in fact, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (2) lack of jurisdiction over the person.

(d) **Preliminary Hearings.** The defenses specifically enumerated in subsections (1)-(6) of section (b) of this Rule, whether made in a pleading or by motion, shall be heard and determined before trail on application of any party. *(Colorado Rules of Procedures)*

8. **AMENDMENT XIV**

No State shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States or shall any State deprive any person of life, liberty, or property, without due process of law. *U.S. Const.*

9. **28 U.S.C. §1651. Writs** -

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principals of law.